IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

S.A.O. No. 4 of 2006 (O&M)
Date of Decision : 16.10.2007

Hardial Singh

..... Appellant

Versus

Pavittar Singh & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Gurcharan Dass, Advocate
for the appellant.

Mr. K.S. Boparai, Advocate
for respondent Nos. 2 & 3.

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VINOD K. SHARMA, J. (ORAL)

This second appeal has been filed against the order dated 25.11.2005 passed by the learned Addl. District Judge, Ludhiana vide which judgment and decree passed by the learned trial Court has been ordered to be set side and the case was remanded back to the learned trial Court to adjudicate the matter afresh by impleading Mohinder Kaur and Gurdev Kaur, daughters of Dalip Singh as parties to the suit.

The appellant had filed a suit for declaration to the effect that plaintiff is the joint owner and also for decree for possession of 1/4th share of land measuring 16K-4M out of the land measuring 64K-4M comprised in Khata No. 286/314, Khasra No. 28//11, 22, 23, 28//10/2, 19, 20/2, 6/2, 7/1/2, 29//15, 151, 174, 338, 417 situated at village Sangowal Tehsil and District Ludhiana as per jamabandi for the year 1993-94, challenge was also to the mutations No. 2612 and 2644 regarding the estate of Jit Singh which

was sanctioned in favour of defendants No. 2 & 3 i.e. Kulwinder Singh and Mandip Singh to be illegal, void and without jurisdiction. A decree for mesne profit was also claimed. The plaintiff further claimed declaration on the basis of Will dated 5.8.1971 stated to have been executed by Jit Singh in his favour.

The suit was contested by the defendants. However, the learned trial Court partly decreed the suit and held that the plaintiff appellant was entitled to succeed on the basis of natural succession as the Will produced was not proved.

Both the parties went in appeal wherein one of the ground taken was that the suit filed by the plaintiff appellant was bad on account of misjoinder of necessary parties as daughters of Dalip Singh i.e. Mohinder Kaur and Gurdev Kaur were not impleaded as party. This conclusion was arrived at on the application moved by the mother of defendant No.1 Jasvir Kaur under Order 6 Rule 17 read with Section 151 C.P.C. for seeking amendment of the written statement. In view of the fact that the application stood allowed, the learned lower appellate Court has been pleased to set aside the decree and remand the case back to the trial Court for fresh decision.

The learned counsel for the plaintiff-appellant challenged the order passed by the learned Addl. District Judge, Ludhiana in allowing the application for amendment of the written statement.

The first contention of the learned counsel for the appellant is that it is not open to the defendants to move an application for amendment of the written statement to implead additional parties as it is for the plaintiff to implead the persons against whom he or she wants relief. It is also

contended by the learned counsel for the appellant that the plea regarding mis-joinder of necessary parties cannot be taken before the learned lower appellate Court in view of the provisions of Order 1 Rule 13 C.P.C. The learned lower appellate Court could not allow the application for amendment merely on the plea that necessary parties were required to be impleaded and the suit could not be decided in absence of the said parties. This finding would lead to conclusion that a suit framed was bad for mis-joinder of parties. The order passed, therefore, is contrary to provisions of Order 1 Rule 13 of C.P.C.

I find no force in the contention raised by the learned counsel for the appellant. There was no occasion for the learned lower appellate Court to have allowed defendant No.3 to amend the written statement merely to implead Mohinder Kaur and Gurdev Kaur daughters of Dalip Singh by treating them to be necessary parties to the case.

As already observed above, it was open to the defendants to have taken plea for dismissal of the suit for misjoinder and non-joinder of parties at the earliest occasion in terms of order 1 Rule 13 C.P.C. but the plea of amendment of written statement on this ground was not available to the defendants. The order of the learned lower appellate Court allowing the application under Order 6 Rule 17 C.P.C. is hereby set aside and the application moved by Jasbir Kaur on behalf of the minor Mandip Kaur under Order 6 Rule 17 C.P.C. is ordered to be dismissed.

In view of the dismissal of the application, the impugned order cannot be sustained and accordingly the same is set aside and the case is remanded back to the learned Addl. District Judge, Ludhiana to decide the appeal on merits.

The parties through their counsel are directed to appear before the learned Addl. District Judge, Ludhiana on 16.11.2007.

16.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**